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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/086,316 | 03/01/2002 | James R. Fore SR. | 4287-008 | 8488 |
| 24112 | 7590 | 01/23/2004 | EXAMINER | |
| COATS & BENNETT, PLLC P O BOX 5 RALEIGH, NC 27602 | | | HAUGLAND, SCOTT J | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3654 | |

DATE MAILED: 01/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/086,316

Applicant(s)

FORE ET AL.

Examiner

Scott Haugland

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-9 is/are allowed.
- 6) ☒ Claim(s) 10-19 and 21-24 is/are rejected.
- 7) ☒ Claim(s) 20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Drawings

The proposed drawing correction filed 11/7/03 has been approved.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 10 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Fore (U.S. Patent No. 5368245).

Fore discloses a pay-out tube for use with a cable container comprising a tube 14 adapted to extend into the interior of the cable container for permitting cable to be fed through the tube, a fastener 34 adapted to be secured to the tube such that a portion of it lies exteriorly of the container, and a cable retainer 32, 36 adapted to be disposed exteriorly of the container for receiving and retaining an end portion of the cable. The cable retainer includes a surface divided by a slit (between 32 and 36) that forms

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two sections 32, 36, one which is deflectable relative to the other into an open state in response to insertion of the end of the cable between the sections.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10-16 and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fore (U.S. Patent No. 5,152,476) in view of Heyman (U.S. Patent No. 3,516,111).

Fore discloses a pay-out tube for use with a cable container comprising a tube 14 adapted to extend into the interior of the cable container for permitting cable to be fed through the tube and a fastener 34 adapted to be secured to the tube such that a portion of it lies exteriorly of the container.

Fore does not disclose a cable retainer including a slit surface that has a series of deflectable sections.

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Heyman teaches providing a cable retainer 1 having a slit surface having a series of eight deflectable sections 7 which deflect open in response to the insertion of an end of a cable between the sections for retaining and protecting a cable passing through a wall or panel (col. 1, lines 23-26; col. 2, lines 25-28) in which the retainer is mounted.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the container of Fore in association with a bushing through which cable is passed as taught by Heyman to retain and protect cable removed from the container of Fore and passed through a wall or panel during installation of the cable.

With regard to claims 14-16, the claimed method is inherent in the use of Fore and Heyman together for their intended purposes. Note that an end portion of cable would be retained by the retainer taught by Heyman during the cable installation process.

Claims 17-19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bass et al (U.S. Patent No. 5,520,347) in view of Newman et al (U.S. Patent No. 4,057,203).

Bass et al discloses a pay-out tube for use with a cable container of figure-8-wound material comprising a molded tube portion 33 (abstract; col. 4, lines 7-10) for guiding cable having a wall into which a series of spaced-

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apart, longitudinally disposed, radially outwardly extending ribs are integrally molded (abstract; col. 5, lines 25-28). The thickness of the ribs exceeds that of the wall (Fig. 2).

Bass et al does not disclose that the tube is elliptical.

Newman et al teaches forming a pay-out tube for use with a container of wound material with an elliptical (oval) cross section to better fit the space provided within a figure 8 coil of wound material in the package.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the cross section of the pay-out tube of the Bass et al elliptical as taught by Newman et al to adapt it to better fit the space provided within a coil of figure-8-wound material.

Note that the ribs 66 (and ribs formed by 66 and 67) are spaced from one another and are nonintersecting as required by claim 17.

Allowable Subject Matter

Claims 1-9 allowed.

Claim 20 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicants' arguments filed 11/7/03 have been fully considered but they are not persuasive.

Applicant argues that the clip 36 of Fore is not a section of a surface defined by the outer face of flange 32. However, clip 36 clearly has a surface that is a section of a surface comprising portions of flange 32 and clip 36. The claims do not require the surface to have any particular shape.

Applicant further argues that there is no motivation to combine the teachings of Fore and Heyman. However, there is seen to be strong motivation to combine their teaches, i.e., to use them together, since Fore discloses a cardboard box for containing and dispensing electrical (communication) cable and Heyman teaches passing electrical cable through bushings to support the cable where the cable passes through walls or panels. The rejected claims merely recite what would be the use of the devices of Fore and Heyman for their intended purposes.

Applicant argues that the purpose Applicant's cable retainer is to retain cable when it is not being dispensed. However, the bushing of Heyman is intended to support cable when it is not being dispensed. While the bushing of Heyman is intended to retain cable both during and after cable is dispensed and is capable of retaining an end of a section of cable extending from a cable dispensing container, the claims do not limit the retainer to

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non-dispensing use or for use on such a cable end and it does not appear that the disclosed retainer is structurally limited to non-dispensing use.

Applicant further argues that the Examiner has not cited any deficiency in the clip of Fore that would lead to modification of the teachings of Fore. However, it is noted that the rejection does not propose modification of the teachings of Fore. Fore does not exclude the use of the disclosed dispenser with a bushing or retainer such as disclosed by Heyman. The teachings of Fore are seen to be completely compatible with those of Heyman. The clip of Fore is not seen to be deficient for its disclosed purpose. The clip, however, cannot provide the desirable function taught by Heyman of supporting and protecting wire that has been installed through a wall or panel.

Applicant argues that Bass et al does not disclose a pay-out tube having non-intersecting ribs. However, ribs 66 are such ribs since they do not intersect each other. Additionally, each rib formed by the pair of ribs 66 and 67 does not intersect any other similar ribs or any of the ribs 66.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Haugland whose telephone number is (703) 305-6498. The examiner can normally be reached on Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathy Matecki can be reached on (703) 308-2688. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

sjh
sjh
1/15/04

Kathy Matecki
KATHY MATECKI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600